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1996 Survey of Rhode Island Law: Cases: Statutes of Limitations

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Statutes of Limitations. *Kelly v. Marcantonio*, 678 A.2d 873 (R.I. 1996). The seven year limitation imposed by Rhode Island General Laws section 9-1-51 for bringing claims for childhood sexual abuse is applicable only to actions against defendant perpetrators. A three year period under section 9-1-14(b) is applied to non-perpetrator defendants. Section 9-1-51 does not apply retroactively to claims already barred by a statute of limitations in effect prior to July 26, 1993.

FACTS AND TRAVEL

In response to litigation in both the United States District Court for the District of Rhode Island and the Rhode Island Superior Court regarding alleged sexual abuse of minors by Catholic priests, these courts sent four certified questions to the Rhode Island Supreme Court for consideration.[1] These cases involved abuse claims against priest-perpetrators, as well as negligence and vicarious liability claims against non-perpetrator agents, including various church employers of the perpetrators, among others.[2] The questions were as follows: 1) "whether claims for injuries resulting from the sexual abuse of a minor are governed by G.L. 1956 § 9-1-51 . . . or G.L. 1956 § 9-1-14(b) when those claims are asserted against someone other than the alleged abuser;"[3] 2) "when does a cause of action accrue against a nonperpetrator-defendant pursuant to § 9-1-14(b);"[4] 3) "whether repressed recollection of past sexual abuse could qualify as a tolling feature encompassed within the 'unsound mind' factor in § 9-1-19;"[5] and as a matter of first impression, 4) "whether, under both the Federal and the State Constitutions, it is constitutionally permissible for our General Assembly to revive a previously time-barred cause of action by application of § 9-1-51 to that cause of action."[6] The supreme court accepted the four certified questions.[7]

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1. Kelly v. Marcantonio, 678 A.2d 873, 874 (R.I. 1996).
2. *Id.*
3. *Id.* at 875.
4. *Id.* at 877.
5. *Id.* at 879.
6. *Id.* at 880.
7. *Id.* at 875-80.

BACKGROUND

When it enacted chapter eighty-four of the 1992 Public Laws, the Rhode Island General Assembly first recognized a special cause of action for victims of childhood sexual abuse.[8] When the Act was first passed, the general civil action statute of limitations of three years commencing when the injury occurred applied to these cases, unless it was tolled under section 9-1-19.[9] The Act also included a delayed discovery rule which permitted a plaintiff to bring an action when he or she first discovered or reasonably should have discovered the injury.[10] Prior to the enactment of section 9-1-51, the Rhode Island Supreme Court had "reserved decision on whether to permit utilization of a discovery rule in a sexual abuse . . . claim" so as to expand the three year limitation period.[11] In 1993, the General Assembly enlarged the original limitation period, extending it from three to seven years in cases of childhood sexual abuse.[12] Litigation arising under section 9-1-51 prompted questions for both the federal and state trial courts as to the proper use and interpretation of the statute of limitations, which the Rhode Island Supreme Court answered in *Kelly v. Marcantonio*.[13]

ANALYSIS AND HOLDING

The first question addressed by the court was "whether claims for injuries resulting from the sexual abuse of a minor are governed by G.L. 1956 § 9-1-51[14] . . . or G.L. 1956 § 9-1-14(b)[15] when

8. *Id.* at 881 (citing 1992 R.I. Pub. Laws ch. 84).

9. R.I. Gen. Laws § 9-1-14(b) (1985); *id.* § 9-1-19 (Supp. 1996).

10. R.I. Gen. Laws § 9-1-51(a) (Supp. 1996).

11. *Kelly*, 678 A.2d at 811 (citing Doe v. LaBrosse, 588 A.2d 605 (R.I. 1991)). In *Kelly*, the court noted that the *Doe* case may have served a small role in prompting the legislature to adopt a delayed discovery rule in the session following the *Doe* decision. *Id.* at 881 n.8.

12. 1993 Pub. Laws ch. 274 (amending R.I. Gen. Laws § 9-1-51(a)).

13. 678 A.2d 873 (R.I. 1996).

14. R.I. Gen. Laws § 9-1-51. This section reads in part as follows:
(a) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within seven (7) years of the act alleged to have caused the injury or condition, or seven (7) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever period expires later.
(b) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents causes the injury complained of, but may compute the date of discovery from the date of the last act by the same

those claims are asserted against someone other than the alleged abuser."[16] Section 9-1-51 permits a claimant to bring an action "for recovery of damages for injury suffered as a result of childhood sexual abuse" within seven years of the act which caused the claimant's injury, or "seven (7) years of the time the victim discovered or reasonably should have discovered . . . that the injury or condition was caused by said act."[17] The court determined that the "only intended target of [section 9-1-51]" was the perpetrator of the criminal sexual act.[18] It based its conclusion on a strict constructionist reading of the legislative language in section 9-1-51, especially 9-1-51(e), and found further support in a California court's interpretation of a similar statute in *Debbie Reynolds Professional Rehearsal Studios v. Superior Court*.[19] In *Reynolds*, the statute addressing the time permitted to bring a sexual abuse claim was limited to claims made against the actual perpetrator.[20] Additional support, the court noted, was demonstrated by the fact that when section 9-1-51 was first enacted, it confined the statute of limitations to the general three year time period permitted for civil personal injury actions.[21] However, the legislature designated that the "intended defendant" was the "perpetrator" for purposes of computing the period of limitation for child sexual abuse victims.[22] According the statutory language its plain and ordinary meaning,

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perpetrator which is part of a common scheme of plan of sexual abuse or exploitation.

. . .

(e) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen (18) years of age at the time of the act and which act would have been a criminal violation of chapter 37 of title 11.

Id.

15. *Id.* § 9-1-14(b) (1985) (providing that actions for personal injuries must be commenced within three years after the cause of action accrues).

16. *Kelly*, 678 A.2d at 875.

17. *Id.* (quoting R.I. Gen. Laws § 9-1-51(a) (Supp. 1996)).

18. *Id.* at 876.

19. 25 Cal. App. 4th 222 (1994) (The goal of the statute was to allow sexual abuse victims more time to become aware of their psychological injuries and continue to be eligible to bring suit. The California statute did not explicitly exclude actions against non-perpetrators, but the appellate court noted that the legislature could easily have expressed their desire to include such defendants if they had so intended).

20. *Id.* at 232-33.

21. *Kelly*, 678 A.2d at 877.

22. *Id.*

the court found it both "clear and unambiguous" that section 9-1-51 had no application to claims made against non-perpetrator defendants, but rather that for those defendants, the three year statute of limitations provided in section 9-1-14(b) applied.[23]

After determining that section 9-1-51 did not apply to non-perpetrator defendants, the court considered when a cause of action would accrue against such defendants under section 9-1-14(b).[24] Because child sexual abuse "is essentially a common law battery," the statute of limitations generally starts running at the time the injury occurs.[25] Following the reasoning of *Reynolds*, the court found that since it was the perpetrator of the abuse who was responsible for instigating the memory repression defense mechanism in the claimant, the delayed discovery rule should only be applied to perpetrator defendants.[26] The court perceived "no persuasive policy" reasons to support applying a delayed discovery rule to non-perpetrator defendants, and noted that the running of the three year limit in section 9-1-14(b) could be tolled pursuant to section 9-1-19.[27]

The court found further support for its decision on this second question in *Anthony v. Abbott Laboratories*,[28] where it applied the delayed discovery rule to drug-product liability actions.[29] Weighing the " 'policy of eliminating the enforcement of stale claims with the opportunity of a person to have his or her day in court,' " the court found the equities coming down on the side of applying the delayed discovery rule in product liability cases.[30] Then-Justice Weisberger dissented, warning that " 'the right to be free of stale claims in time comes to prevail over the right to prosecute them.' "[31] Finding no policy reason strong enough to support the

23. *Id.* (quoting Bottiglieri v. Caldarone, 486 A.2d 1085, 1087 (R.I. 1985)).

24. *Id.*

25. *Id.* (quoting Silveira v. Santos, 490 A.2d 969, 973 (R.I. 1985)) (citing Soares v. Ann & Hope, 637 A.2d 339 (R.I. 1994)).

26. *Id.* at 878 (citing Debbie Reynolds Prof'l Rehearsal Studios v. Superior Ct., 25 Cal. App. 4th 222, 233 (1994)).

27. *Id.* Section 9-1-19 sets out the disabilities which postpone the running of a statute of limitations, including being under "the age of eighteen (18) years, or of unsound mind, or imprisoned, or beyond the limits of the United States." R.I. Gen. Laws § 9-1-19 (Supp. 1996).

28. 490 A.2d 43 (R.I. 1985).

29. *Kelly*, 678 A.2d at 877 (citing *Anthony*, 490 A.2d at 43).

30. *Id.* at 878 (quoting *Anthony*, 490 A.2d at 46-47).

31. *Id.* (quoting *Anthony*, 490 A.2d at 49 (Weisberger, J., dissenting)).

application of the delayed discovery rule to non-perpetrators, and recognizing that "the General Assembly considered the right of the nonperpetrator-defendant to be free of stale claims to be as great as the right of a plaintiff to prosecute a childhood sexual abuse claim," the court declined to upset the balance set by the legislature.[32] Thus, the court answered the second certified question by holding that "in actions against nonperpetrator defendants for damages resulting from childhood sexual abuse, the period of limitation, under § 9-1-14(b), commences to accrue at the time the injury occurs, subject to the tolling provision of § 9-1-19."[33]

The third question required the court to answer "whether repressed recollection of past sexual abuse could qualify as a tolling feature encompassed within the 'unsound mind' factor in section 9-1-19."[34] While suggesting that it would answer this affirmatively, the court noted that it "was not the proper forum" to make this determination, and chose to leave the final question for the trial courts.[35] The court noted that in a particular case, trial judges would hold hearings to consider expert medical and scientific evidence to determine whether the "alleged repressed recollection in a particular case is sufficiently relevant, reliable, and scientifically and/or medically established so as to constitute 'unsound mind,' thereby tolling the action limitation period."[36] The standard set for the trial judges in examining expert testimony is set forth in *State v. Wheeler*,[37] which requires the trial court to determine whether the evidence is relevant, whether the expert is qualified on the subject matter, and whether the expert opinion is of substantial probative value.[38] If the trial court decides that evidence of an unsound mind exists, the claim arising out of "the childhood sexual abuse would not be . . . time-barred . . . until three years after the unsound mind disability ends, and the repressed recollections are recovered."[39]

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32. *Id.*

33. *Id.* at 879.

34. *Id.*

35. *Id.*

36. *Id.* A finding of "unsound mind" is similar to a finding of insanity, which is also determined by the trial courts. *Id.* at 879 n.6.

37. 496 A.2d 1382 (R.I. 1985).

38. *Id.* at 1388.

39. *Kelly*, 678 A.2d at 880.

Finally, the court turned to the fourth question, "under both the Federal and the State Constitutions, is it constitutionally permissible for our General Assembly to revive a previously time-barred cause of action by application of section 9-1-51 to that cause of action."[40] The court answered this issue of first impression in the negative, holding that while the General Assembly may "enlarge an already existing action limitation period that would be applicable to causes of action thereunder not already time-barred," it was precluded by the Rhode Island Constitution from reviving an "already time-barred action that would impinge on a defendant's vested and substantive rights."[41]

In 1986, the Rhode Island Constitution was amended to include a civil due process clause.[42] Prior to this amendment, the revival of time-barred claims through retroactive application of statutes of limitation were not constitutionally prohibited.[43] Decisions made prior to this time relied upon a general federal rule stated in *William Danzer & Co. v. Gulf & Ship Island Railroad Co.*,[44] that "general statutes of limitation that are procedural in nature affect only remedies, and not rights, and as a result there would be no per se due process violation caused by enactment of a statute reviving an already time-barred claim."[45]

However, in *Twomey v. Carlton House*,[46] the Rhode Island Supreme Court, in dicta, expressed its desire to protect a defendant's right to immunity from prosecution, because that right "is as valuable a right to one party as the right to prosecute that suit is to the other . . . the opportunity to defend on statute of limitations grounds is a vested right protected by due process concepts."[47] Once the Rhode Island Constitution was amended to add a civil

40. *Id.* (noting that this question pertained only to perpetrator defendants, as the scope of section 9-1-51 was limited to that class of defendants).

41. *Id.* at 883 (citing Twomey v. Carlton House, 320 A.2d 98 (R.I. 1974)).

42. R.I. Const. art. I, § 2 (amended 1986).

43. *Kelly*, 678 A.2d at 882 (citing Dandeneau v. Board of Governors for Higher Educ., 491 A.2d 1011 (R.I. 1985); Spagnoulo v. Bisceglio, 473 A.2d 285 (R.I. 1984); *Twomey*, 320 A.2d at 98).

44. 268 U.S. 633 (1925).

45. *Kelly*, 678 A.2d at 882 (citing *Danzer*, 268 U.S. at 633; Campbell v. Holt, 115 U.S. 620 (1885); Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945)). The court noted that most state courts do not follow the general federal rule set out in these cases. *Id.* at 883.

46. 320 A.2d 98 (R.I. 1974).

47. *Id.* at 101 (quoting *Campbell*, 115 U.S. at 620 (Bradley, J., dissenting)).

due process clause in 1986, the court was free to follow its inclination as expressed in *Twomey*, and did so here, by precluding legislation with retroactive features from permitting the revival of an already time-barred action. Such revival was held to impinge upon a defendant's vested and substantive rights to immunity from prosecution, and would offend a defendant's state constitutional due process protections.[48]

CONCLUSION

The court has clearly established that Rhode Island General Laws section 9-1-51 regarding the limitation period on childhood sexual abuse actions applies only to claims against perpetrator defendants, while actions against non-perpetrator defendants are properly within the time limits set by section 9-1-14(b). It is within the trial court's purview to determine whether the statute of limitations period can be tolled due to the inability of a claimant to recall incidents of sexual abuse. Finally, section 9-1-51 cannot be retroactively applied to claims which are barred by a statute of limitations already in effect prior to the effective date of that provision.[49]

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48. *Kelly*, 678 A.2d at 883.
49. The effective date of section 9-1-51 was July 26, 1993.